

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jerome T. Pasto,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

(ECP)

Case 02-10-026

(Filed October 23, 2002)

**OPINION GRANTING PARTIAL
REFUND OF PAYMENT FOR LINE EXTENSION**

1. Summary

Jerome T. Pasto (Complainant), seeks a full refund of a \$3,013.78 payment he made to Pacific Bell Telephone Company (SBC Pacific Bell) for a line extension because additional customers were connected to the line extension.

SBC Pacific Bell responds that in accordance with its tariffs Complainant is not entitled to any refund because the new lines were added after the three-year term for refunds had lapsed.

In this decision we conclude that there was a material omission in SBC Pacific Bell's quotation letter to Complainant regarding the availability of refunds; therefore, SBC Pacific Bell should provide Complainant with a 75% prorata refund to reflect the addition of three new lines.

The complaint is granted in part and denied in part, and this proceeding is closed.

2. The Facts

Complainant paid SBC Pacific Bell \$3,013.78 to construct a line extension to provide telephone service to his new house. Service was established on December 20, 1996. Complainant was the only customer on the line extension until October 2001. Three new lines to serve new customers were added in October 2001, May 2002, and October 2002.

3. Position of the Parties

SBC Pacific Bell states that under its tariff, Complainant would only be entitled to a prorated refund if additional lines were added to the line extension *within three years of phone service being established, i.e.,* prior to December 20, 1999. Since no additional lines were added to serve other customers until October 2001, well outside the three-year term provided by the tariff, SBC Pacific Bell contends that it has fully complied with its tariff Schedule Cal P.U.C. No. A4, and that no refund is due Complainant.

Complainant argues that under SBC Pacific Bell's May 30, 1996 quotation letter, the line extension was "for sole customer use," and contends that, SBC Pacific Bell has no right to add new customers to the line extension he paid for. According to Complainant, the quotation letter and the enclosed "Agreement Covering Minimum Period of Telephone Service Where Line Extensions are Involved,"¹ which he signed and returned with his payment, constitute the full extent of his contract. He contends that SBC Pacific Bell cannot now invoke its

¹ Since SBC Pacific bell provides 750 feet of line at no charge, the customer is required to sign an agreement to maintain phone service on that line extension for 36 consecutive months.

tariff rules since it did not provide him with a line extension contract and a copy of its tariff rules at the time he paid for the line extension.

4. Discussion

A hearing on this complaint was held in Sacramento on December 3, 2002. We note that SBC Pacific Bell did not provide Complainant with a copy of its tariff rules; however, SBC Pacific Bell's quotation letter specifically references its tariff rules:

"Your location was canvassed by our engineers and it has been determined that Pacific Bell's most feasible route from our existing facilities would consist of 2,810 feet of line extension **for sole customer use.**

In compliance with the provisions set forth in **our Tariff Schedule Cal P.U.C. No. A4** dealing with line extension charges[,you] will be given a free footage allowance of 750 feet. The remaining footage is to be billed per foot."

Further, the agreement that Complainant signed states:

"In consideration of Pacific Bell extending its lines beyond its existing leads, under the provisions of its **tariffs on file with the Public Utilities Commission** I agree to retain and pay all charges for such telephone service in accordance with **said tariff . . .**" (Emphasis added.)

While SBC Pacific Bell's tariff rules were incorporated by reference in both its quotation letter and the agreement signed by Complainant, there is no mention regarding the possibility of refunds. SBC Pacific Bell should have informed Complainant that prorata refunds would be provided if new lines were added within three years. We believe that this was important information which could have caused Complainant to defer his line extension until there were others willing to join in the project, thereby reducing his cost. Such information would also have alerted Complainant to the fact that the line extension was not solely for his use, but that other lines could be added at a later date.

In summary, we conclude that SBC Pacific Bell made a material omission in its quotation letter by not mentioning the refund provisions of its tariff; therefore, the agreement between the parties should be construed in favor of the Complainant, and SBC Pacific Bell should provide Complainant with a 75% refund of his payment. No further refunds shall be payable if there are more additions.

5. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The complaint is granted in part and denied in part.
2. Pacific Bell Telephone Company shall refund 75% of Complainant's payment of \$3,013.78 for his line extension. No interest is payable and there shall be no further refunds if new lines are added.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.